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August 26, 2021

Via Email: Michael_melloy@ca8.uscourts.gov
(with copies via email to those on attached service list)

Honorable Michael J. Melloy
Special Master
United States Circuit Judge
111 Seventh Ave., S.E. Box 22
Cedar Rapids, IA 52401

Re: *State of Texas v. State of New Mexico and State of Colorado*,
United States Supreme Court, Docket No. 141 Original

Dear Judge Melloy:

Undersigned counsel for *Amicus Curiae* Hudspeth County Conservation and Reclamation District No. 1 ("HCCRD") respectfully submits this letter to Your Honor on behalf of HCCRD for the purpose of offering HCCRD's support for the motion for continuance recently filed by the State of Texas. This letter is meant for your honor's consideration in advance of the telephonic Pretrial Conference set for tomorrow, August 27, 2021, at 11:00AM, CDT.

Background

HCCRD is a conservation and reclamation district of the State of Texas established under Article XVI, § 59 of the Texas Constitution. HCCRD has a significant interest in the outcome of this litigation. HCCRD has submitted two amicus briefs to the United States Supreme Court in connection with this action (one on March 11, 2013, and the other on January 16, 2014) and a letter to your honor, dated April 3, 2019, concerning the its nature of its interests related to this action.

State of Texas' Motion for Continuance of Trial Setting

On August 19, 2021, the State of Texas filed a Motion for Continuance of Trial Setting and Memorandum in Support ("Motion for Continuance"), requesting that your honor enter an order continuing this case from its current setting beginning on September 13, 2021, for at least six months, to March 21, 2022. The State of Texas filed this motion because its lead counsel, Mr. Stuart Somach, has had an unexpected family emergency and will be unavailable to appear in-

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person for trial as currently scheduled. The State of Texas also set forth in its motion additional practical considerations, including considerations related to COVID-19, weighing in favor of granting a continuance.

On August 21, 2021, *Amicus Curiae* El Paso County Water Improvement District No. 1 (“EPCWID”) submitted a response in support of Texas’ Motion for Continuance (“EPCWID Response”). In addition to supporting the State of Texas’ motion for the reasons related to Mr. Somach’s unexpected family health emergency, EPCWID elaborated on and underscored the issue that the current surge of COVID-19 may halt plans to commence the trial in-person or interrupt in-person proceedings part way through. In addition to supporting the State of Texas motion for a six-month continuance, EPCWID also presented an alternative suggestion: to “bundle up the issues already addressed by the Special Master. . . and present a Special Master’s Report and Recommendation to the Court within the next few months instead of proceeding to trial now.”

Position of Hudspeth County Conservation and Reclamation District No. 1 with
Respect to the State of Texas’ Motion for Continuance and EPCWID#1’s Alternative Suggestion

For the reasons set forth in the State of Texas’ Motion for Continuance and the EPCWID Response, HCCRD fully supports the State of Texas’ Motion for Continuance and urges your honor to expeditiously grant it. HCCRD agrees that if the trial proceeds as currently scheduled without Mr. Somach present, the State of Texas will be unfairly disadvantaged. Perhaps more than any other entity or group of individuals, HCCRD and its constituents have relied and continue to rely on the State of Texas and its legal representatives including Mr. Somach to represent and protect their interests in this action. HCCRD also agrees with EPCWID that the current nationwide surge of COVID-19 cases raises the possibility of disruption of the trial in this case if the current schedule is adhered to, and that a continuance will make such disruption less likely.

Finally, HCCRD agrees with EPCWID that your honor should consider EPCWID’s alternative suggestion to present a Special Master’s Report and Recommendation to the United States Supreme Court within the next few months instead of proceeding to trial now.

Conclusion

For the above-stated reasons, *Amicus Curiae* Hudspeth County Conservation and Reclamation District No. 1 respectfully urges your honor to grant the State of Texas’ Motion for Continuance and continue this case from its current setting beginning on September 13, 2021, for at least six months, to March 21, 2022. As an alternative to granting that continuance, *Amicus Curiae* Hudspeth County Conservation and Reclamation District No. 1 respectfully requests that your honor consider the alternative suggested by EPCWID#1 that your honor presents a Special Master’s Report and Recommendation to the United States Supreme Court within the next few months instead of proceeding to trial now.

Thank you for consideration of these matters.

Honorable Michael J. Melloy
August 26, 2021
Page 3

Respectfully submitted,

KEMP SMITH LLP

By: 

Andrew S. "Drew" Miller

**Counsel of Record for Hudspeth County
Conservation and Reclamation District
No. 1**

Attachment – Service List

SERVICE LIST FOR ALL PARTIES

In The Supreme Court of the United States, Original No. 141
STATE OF TEXAS v. STATE OF NEW MEXICO and STATE OF COLORADO

PARTIES¹

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MEDIATOR

Mediator	Hon. Oliver W. Wanger (U.S.D.J. Ret.) WANGER JONES HELSLEY PC 265 E. River Park Circle Suite 310 Fresno, CA 93720	owanger@wjhattorneys.com dpell@wjhattorneys.com
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SPECIAL MASTER

Special Master	Honorable Michael J. Melloy <i>Special Master</i> United States Circuit Judge 111 Seventh Avenue, S.E., Box 22 Cedar Rapids, IA 52401 Michael E. Gans, Clerk of Court United States Court of Appeals – Eighth Circuit Thomas F. Eagleton United States Courthouse 111 South 10th Street, Suite 24.329 St. Louis, MO 63102	(319) 432-6080 TXvNM141@ca8.uscourts.gov (314)244-2400 TxvNM141@ca8.uscourts.gov
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****Updated 4/16/2018**

Corrected the spelling of Pricilla M. Hubenak to Priscilla M. Hubenak and added her e-mail address Priscilla.Hubenak@oag.texas.gov to the Service list.

****Updated 4/18/2018**

Added Toby Crouse (toby.crouse@ag.ks.gov) as the Solicitor General for the State of Kansas and removed Stephen R. McAllister.

****Updated 4/24/2018**

Added Clerk of Court information and updated Special Master e-mail address.

****Updated 11/16/18**

Added Bryan Clark's e-mail address (bryan.clark@ag.ks.gov) for the State of Kansas

****Updated 3/14/19**

Updated Attorney General of Colorado to Philip J. Weiser

Added Solicitor General Eric R. Olson (eric.olson@coag.gov) for the State of Colorado

****Update 3/19/19**

Added legal assistants Shannon Gifford (shannong@modrall.com) and Leanne Martony (leannem@modrall.com) for El Paso County Water District No. 1

Added James M. Speer, Jr., information for El Paso County Water District No. 1

****Update 5/6/19**

Added Sarah A. Klahn (sklahn@somachlaw.com), Richard S. Deitchman

(rdeitchman@somachlaw.com), Rena Wade (rwade@somachlaw.com) and Corene Rodder (crodder@somachlaw.com) for State of Texas. Removed Rhonda Stephenson.

****Update 11/6/19**

Added Lamai Howard (lamaih@modrall.com) for El Paso County Water District No. 1.

Removed Leanne Martony.

****Update 11/21/19**

Added Jo Harden (jo@tessadavidson.com) for New Mexico Pecan Growers. Removed Patricia McCann.

****Update 11/22/19**

Removed Lizbeth Ellis and Clayton Bradley and added General Counsel (gencounsel@nmsu.edu) email for New Mexico State University.

- **Update 1/7/20**
Added David W. Gehlert (david.gehlert@usdoj.gov) for the United States. Updated Solicitor General information. Also added John P. Tustin (john.tustin@usdoj.gov) for the United States.
- **Update 2/19/20**
Added Renea Hicks for El Paso County Water Improvement District No. 1. Removed James M. Speer and Lamai Howard.
- **Update 2/26/20**
Added Darren L. McCarty for State of Texas. Removed Brantley Starr and James Davis. Also added Crystal Rivera and removed Rena Wade.
- **Update 5/1/20**
Added Cholla Khoury, Luis Robles, Jeffrey Wechsler and John Draper for the State of New Mexico. Removed David A. Roman. Also added Bonnie DeWitt, Pauline Wayland, Diana Luna and Donna Ormerod.
Added Preston Hartman for the State of Colorado. Removed Karen Kwon.
- **Update 7/7/20**
Added mediator information - Hon. Oliver W. Wanger.
- **Update 10/1/20**
Added Susan Barela (susan@roblesrael.com) for State of New Mexico.
- **Update 10/2/20**
Added Jennifer A. Najjar and removed Stephen M. MacFarlane, Thomas Snodgrass and David W. Gehlert for the United States.
- **Update 12/14/20**
Added Zachary E. Ogaz (zogaz@nmag.gov) for State of New Mexico.
- **Update 1/26/21**
Added Southern Rio Grande Diversified Crop Farmers Association information.
- **Update 2/1/21**
Added Robert Cabello and removed Marcia Driggers for City of Las Cruces.
- **Update 2/23/21**
Updated Solicitor General information and removed John P. Tustin for the United States.
- **Update 7/1/21**
Added Charlie Padilla (CharlieP@modrall.com) and removed Shannon Gifford for EPCWID.
- **Update 7/21/21**
Updated Attorney General/Solicitor General information and removed Christina Garro for State of Texas.